

RICS, Regulatory Tribunal Rules, March 2020

Part VI, Regulatory Tribunal Single Member Decision.

Regulated Member: Mr Dodampe Wickramasundra
Case Number: REG0000162686
Single Member Decision of: Ian F Hastie MRICS
Date of decision: 22nd February 2022

CHARGE:

The formal charge against the Regulated Member is:-

‘Between 1 January 2020 and 1 February 2021 you have failed to comply with RISC’ requirements in respect of Continuing Professional Developments (CPD) in that you have not completed and recorded, or caused to be recorded, at least 20 hours of CPD on the RICS CPD Portal.’

Contrary to Rule 6 of the Rules of Conduct for Members 2007 version 6.

The Regulated Member is therefore liable to disciplinary action under Bye-law 5.2.2(c)

BACKGROUND:

- 1 RICS Members are required to complete 20 hours of CPD activity by 31 December of each calendar year, and record, or cause it to be recorded,.
- 2 Rule 6 of the Rules of Conduct for Members 2007 states: **Members shall comply with RICS’ requirements in respect of continuing professional development.**
- 3 The requirements of the Rule are as follows:
 - (i) All RICS members must undertake a minimum of 20 hours CPD each calendar year (January to December).

- (ii) Of the 20 hours at least 10 hours must be formal CPD. The remainder can be informal CPD
 - (iii) All RICS members must maintain a relevant and current understanding of RICS professional and ethical standards during a rolling three-year period. Any learning undertaken in order to meet this requirement may count as formal CPD
 - (iv) All members must record their CPD activity online by 31 January.
- 4 The CPD requirements confirm that for a first breach of this rule the member would receive a Fixed Penalty Caution which will remain on the member's disciplinary record for a period of 10 years. A second breach will result in a further Caution and a Fixed Penalty Fine of £150 or equivalent. Non-payment of the Fixed Penalty within 28 days of notification will lead to the fine being increased to £250. A third CPD breach is likely to result in a referral to disciplinary proceedings.

FINDINGS OF FACT

- 5 Before considering any evidence, I reminded myself of the burden and standard of proof in these proceedings. The burden of proving the charges rests with RICS throughout. The standard of proof is the civil standard, normally described as the balance of probabilities. Another way of expressing this is to ask whether a fact in issue is more likely than not to have occurred."
- 6 I have been provided with a hearing bundle of 62 pages which include a CPD printout from RICS' online system held for Mr Wickramasundra and a witness statement from a CPD Administrator.
- 7 I accept that if the printout does not contain an entry for a particular year that indicates that no CPD was recorded for that year. There was no entry on Mr Wickramasundra's CPD printout for the year 2020. I noted that there is no evidence that Mr Wickramasundra has applied for any RICS Exemption or Concession which would have allowed him to avoid that requirement.

- 8 I also note there is a 'read' receipt from Mr Wickramasundra, to the RICS Single Member referral letter (by email) dated 17th January 2022, but otherwise Mr Wickramasundra has not engaged with RICS, and I have no plea on the charge.
- 9 Accordingly, I find the factual allegations proved, based on the documentary evidence produced.

DECISION AS TO LIABILITY FOR DISCIPLINARY ACTION

- 10 I am satisfied that the RICS requirements to complete and record CPD is reasonable and that Mr Wickramasundra's failure to comply with these requirements is sufficiently serious to give rise to a liability for disciplinary action. In reaching this conclusion I take into account the fact that the CPD policy has been approved by the Regulatory Board and is an expressly stated RICS rule. In addition the Sanctions Policy makes it clear that even a single breach of CPD requirements is sufficient to give rise to a liability for disciplinary action. I note that the purpose of the CPD requirements is to ensure that there are consistent standards within the profession and that members maintain up to date knowledge in their area of expertise in the interests of protecting the public and the wider public interest. I note that all members agree to adhere to the RICS Rules, Regulations and Bye-Laws and accept that they may be subject to disciplinary action if they fail to do so. I am satisfied that Mr. Wickramasundra was given every opportunity to comply with the CPD requirements.
- 11 Accordingly, I am satisfied that Mr. Wickramasundra is liable to disciplinary action.

SANCTION

- 12 I take into account the RICS Sanctions Policy and Mr Wickramasundra's disciplinary history which is as follows:
- 2013 – Caution
 - 2015 – Caution and fine.

13 The bundle documents reveal that Mr Wickramasundra's membership fees in 2020 and 2021 have been paid.

14 In the bundle, RICS confirms that a minimum of 5 reminders were sent to the Regulated Member's preferred email address, between November 2020 and the final one on 4 May 2021, all of which contained the following paragraph:

"Our records show that you have not yet recorded this minimum requirement. As per the RICS Rules of Conduct for Members and Sanction Policy, because you have already been in breach twice of the CPD Rules of Conduct for Members, and received a Fixed Penalty (Caution & Fine) within the last 10 years, if you do not complete and record the 2020 required minimum of 20 hours of CPD (including 10 hours of formal CPD), you may be in breach for the third time and therefore at risk of referral to Disciplinary Panel with presumption of expulsion."

I am satisfied that the reminders were correctly addressed to the preferred address then held on file for the Regulated Member.

15 RICS is a professional membership organisation and sets standards for its members as a condition of membership. The recording of CPD is RICS' line of sight to ensure compliance and in turn give protection to the public. Compliance is not optional. It is not difficult to record CPD online and the CPD requirements are not dependent on the RICS sending reminders to its members.

16 I bear in mind that the purpose of sanctions is not to be punitive, although it may have that effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator and to protect the public. Sanctions must be proportionate to the breach and all the circumstances, and a decision should be reached having taken into account any mitigating and/or aggravating factors.

17 I considered that the following aggravating factors were present in this case: [REDACTED]

- The member was sent numerous reminders by RICS as the deadline for CPD

submission approached and in the weeks immediately following. No CPD was recorded for 2020 and the member has not provided any explanation for this.

- This is the third breach of the regulation in a period of eight years.
- The second breach was dealt with by way of reprimand and a fine, which has been [REDACTED] paid. [REDACTED] .
- Having received sanctions of two fixed penalties for not completing his CPD in previous years, Mr. Mr Wickramasundra cannot be unaware of his obligation as a member to comply with the CPD rules.
- There has been no engagement from Mr. Mr Wickramasundra despite frequent reminders to his correct email address. [REDACTED]

18 I consider that the following mitigating factors were present in this case:

- The breach in 2015 was for recording his completed hours of CPD late. He had completed 39 hours of CPD
- Since his first caution the member has completed and recorded six consecutive years of compliant CPD. [REDACTED]

19 I first considered whether to impose any sanction. I concluded that the repeated failure to record CPD was serious and, in the absence of exceptional circumstances, imposing no sanction would be neither proportionate nor appropriate. In reaching this conclusion I noted that Mr. Wickramasundra had been sent numerous reminders by RICS. The obligation to complete and record CPD is contained within the rules and is not dependent upon the member receiving reminders from RICS.

20 I went on to consider whether to impose a caution. I concluded that a caution would not adequately reflect the seriousness of the case, repeated non-compliance and the fact that a caution had already been imposed for previous breaches. I also considered the imposition of a reprimand but concluded that similarly this did not reflect the seriousness of Mr. Wickramasundra's repeated failure to comply with the requirement to complete, record or cause to be recorded CPD on the RICS portal. [REDACTED]

- 21 In considering whether to impose an undertaking I took into account the mandatory nature of the CPD requirements. I noted that the CPD requirements are designed to ensure that the skills and knowledge of RICS members is kept up to date and ultimately to ensure public protection. I concluded that it would not be appropriate or proportionate, in the absence of exceptional circumstances, to impose an undertaking given that Mr. Wickramasundra should have been completing and recording his CPD online in any event. I concluded that imposing such a sanction would undermine public trust and confidence in the regulatory process.
22. I then considered whether to impose a fine. I was mindful that a fine was imposed on Mr. Wickramasundra for failing to record his CPD hours for the year 2015. However, that sanction was five years previous to this current breach, and was then only for a late recording of his completed CPD for that year. He has since the completed four continuous years of compliant CPD, prior to this failure to complete and record his 2020 CPD. I concluded that, in these circumstances, to impose a further financial penalty would serve as part of a proportionate sanction for this breach.
- 23 I went on to consider conditions. I took the view that imposing a condition for non-compliance of the CPD requirements is appropriate in certain circumstances. MR. Wickramasundra has completed six continuous years of compliance excepting one late recording, up until 2020. I consider that a condition on the member to comply with his 2022 CPD requirements, would be proportionate in this case. A condition which will indicate to Mr. Wickramasundra that any further digressions from CPD compliance would have the most serious consequences. This sanction, combined with the sanction of a fine would be proportionate and appropriate to protecting the public and the wider public interest.
- 24 I went further to consider if Mr. Wickramasundra should be expelled from RICS membership. I recognise that expulsion is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. I am aware that Mr. Wickramasundra has not

engaged with RICS in this instance, excepting that he acknowledged receipt of their final letter. He has paid his membership fees for the following year. I know not why he has not complied with his CPD requirements in 2020, but, in view of his former compliance record, I am of the opinion that in this case expulsion would be a step too far, and would be neither appropriate nor proportionate

DECISION

25 Having read the papers and considered the evidence, in accordance with Part VI of the Regulatory Tribunal Rules 2020, I make the following order:

That Mr. Dodampe Wickramasundra shall be fined a sum of £750.00, or equivalent.

I also impose the following condition:

As a condition of his continuing membership, Mr. Dodampe Wickramasundra is directed to comply with RICS' CPD requirements for the year 2022, and recorded by 31st January 2023. Any breach of this condition will be dealt with in accordance to Rule 110 and referred to the Disciplinary Panel.

COSTS

26 In accordance with Rule 119 of the Regulatory Tribunal Rules 2020 I make the following order in respect of costs:

Mr. Dodampe Wickramasundra will pay costs in the amount of £350

Taking Effect of the Order

27 In accordance with Rule 114 of the Regulatory Tribunal Rules 2020

114. Following the expiry of 14 days from the service of the Single Member's decision upon the Regulated Member, The Regulatory Sanction will be deemed to be accepted by the Regulated Member and the Regulatory Sanction imposed will take effect forthwith, unless notification has been received under Rule 116.

The Regulated Member must notify the Head of Regulatory Governance and Tribunals within 14 days of receipt of this decision, if he does not accept this decision, failing which the order will be deemed accepted by the Regulated Member and will take effect.

Publication

28 This decision will be published in accordance with Rule 120 of the Regulatory Tribunal Rules 2020, which states the following:

120. in accordance with the Regulatory Sanctions Publication Policy.

- a pending the expiry of 14 days following service of the record of decision upon the parties, the Regulated Member's name, charge/s and Single Member's decision as to whether the charge/s were found proved or not proved, and Regulatory Sanction if applicable will be published in accordance with the Regulatory Sanctions Policy and*
- b the Single Member's Record of Decision will be published following the expiry of 14 days.*